

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RICHARD W. KENNARD,)	
)	
Plaintiff)	
)	
v.)	Civil No. 01-217-B-K
)	
UNUM LIFE INSURANCE)	
COMPANY and IRVING OIL)	
CORPORATION,)	
)	
Defendants)	

MEMORANDUM OF DECISION¹

This matter is before me on the defendants’ joint motions for partial summary judgment in favor of the Plan and to dismiss plaintiff’s claim under 29 U.S.C.

§ 1132(a)(3). (Docket No. 7.) I now **GRANT** the motions entirely.

FACTS

The plaintiff failed to file any response to defendants’ motions and therefore the uncontroverted facts are deemed admitted to the extent they are supported by the record pursuant to Local Rule 56. Based upon my review the following material facts have been established: The plaintiff, Richard W. Kennard, was an employee of Irving Oil from January, 2000 until July, 2000. Defendant Irving Oil Corporation (the “Plan”) purchased a group long-term disability insurance policy from defendant Unum Life Insurance Company of America (“Unum”), effective August 1, 1995. In December, 2000 Kennard sought long-term disability benefits under the policy. On March 28, 2001 Unum denied

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

the claim to benefits and Kennard appealed. Unum upheld its prior decision and Kennard then filed this lawsuit on October 29, 2001.

Irving Oil Corporation is identified as the Plan Administrator, but the policy is an insurer administered plan. The contract between Unum and the Plan provides “When making a benefit determination under the policy, Unum has discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy.” If Kennard were to receive a judgment to recover benefits under the policy, Unum would pay that judgment and the Plan would not be required to pay any part of any judgment in favor of Kennard.

Summary Judgment Standard

A party moving for summary judgment is entitled to judgment in its favor only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the non-movant. Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 50 (1st Cir. 2000). “The failure of the nonmoving party to respond to a summary judgment motion does not in itself justify summary judgment.” Lopez v. Corporacion Azucarera de Puerto Rico, 938 F.2d 1510, 1517 (1st Cir. 1991). It is incumbent upon the moving party to demonstrate undisputed facts entitling it to summary judgment as a matter of law. Id.

Discussion

Kennard has made a straightforward claim for benefits under 29 U.S.C. § 1132(a)(1)(B). His allegation is that he is entitled to benefits pursuant to the policy and

that he was wrongfully denied those benefits. “The proper party defendant in an action concerning ERISA benefits is the party that controls administration of the plan.” Terry v. Bayer Corp., 145 F.3d 28, 36 (1st Cir. 1998)(citation omitted). Unum does not dispute the general proposition that a Plan Administrator can be named as a proper party defendant in a claim for benefits under ERISA, but argues that its inclusion in this case is duplicative and unnecessary because Unum is the claims administrator and the challenged decisions, as well as the liability to pay any ultimate judgment, are Unum’s sole responsibility.

Other courts have recognized that the inclusion of the Plan Administrator as a defendant in situations such as this is superfluous. See e.g., MacMillan v. Provident Mut. Life Ins. Co., 32 F.Supp. 2d 600, 604-605 (W.D.N.Y. 1999)(“[The plan administrator] did nothing in its capacity as administrator of the plan that could establish liability on its part to pay benefits to plaintiff pursuant to § 1132(a)(1)(B) . . . Whatever relief the plaintiff is entitled to in this regard must come from [the claims administrator], not from [the plan administrator.]”). The Plan is entitled to summary judgment in its favor on the complaint.

To the extent that Irving Oil has been named as a defendant solely in its capacity as Kennard’s employer, rather than as the Plan Administrator, it is not a proper party at all. The general rule is that an employer is not a proper party to an ERISA suit brought pursuant to 29 U.S.C. § 1132 unless “it is the designated plan administrator or fiduciary . . . [or] it is the employee benefit plan’s sponsor and no other administrator or fiduciary has been designated.” Beegan v. Associated Press, 43 F. Supp. 2d 70, 73 (D. Me. 1999). An exception to this rule exists “if the plaintiff shows that the employer controlled or

influenced the administration of the plan.” Id. (collecting cases); see also Law v. Ernst & Young, 956 F.2d 364, 373 (1st Cir. 1992) (holding that summary judgment in favor of an employer is inappropriate where “the employer may, as a matter of fact, have taken an active part in the administration of the pension plan”) (citation omitted). On these undisputed facts, Irving Oil is entitled to summary judgment in its favor in its capacity as both the Plan Administrator and the employer.

Motion to Dismiss

Kennard has asked for relief in his complaint in that he seeks payment of those benefits wrongfully withheld and unspecified equitable relief. He purports to bring his claim pursuant to 29 U.S.C. § 1132(a)(1)(B), § 1132(a)(3) and § 1132(g). Defendants seek dismissal of so much of the claim as seeks relief pursuant § 1132(a)(3) pursuant to Rule 12(b)(6) because it fails to state a claim. I believe that they are correct in their analysis.

In Varity Corp. v. Howe, 516 U.S. 489 (1996), the United States Supreme Court identified § 1132(a)(3) as a “catchall” provision that acts as a “safety net, offering appropriate equitable relief for injuries caused by violations that [§ 1132] does not elsewhere adequately remedy.” Id. at 512. See also Trombley v. Tel. & Tel. Co., 89 F.Supp. 2d 158, 166 (D.N.H. 2000) (“The Supreme Court has made clear that the equitable remedies provided in § 1132(a)(3) may not be invoked when some other subsection contained in § 1132 provides adequate relief for the alleged violations.”) Kennard does not allege any action by either defendant for which he could seek a separate remedy under § 1132(a)(3). That portion of the complaint should be dismissed.

Conclusion

Based upon the foregoing, judgment is **GRANTED** to defendant Irving Oil Corporation. Furthermore, so much of the complaint as purports to allege a violation pursuant to 29 U.S.C. § 1132(a)(3) is **DISMISSED**.

So Ordered.

Dated March 14, 2002

Margaret J. Kravchuk
U.S. Magistrate Judge

STNDRD

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-217

KENNARD v. UNUM LIFE INSURANCE, et al

Filed: 10/30/01

Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK

Demand: \$0,000

Nature of Suit: 791

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 29:1002 E.R.I.S.A.: Employee Retirement

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